

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

ROBERT CARTER,	)	CASE NO. 3:16CV980
	)	
Petitioner,	)	JUDGE DONALD C. NUGENT
	)	
v.	)	MAGISTRATE JUDGE
	)	GEORGE J. LIMBERT
SHELBY SMITH, Warden	)	
CORRECTIONAL RECEPTION CENTER,	)	<u>ORDER ADOPTING</u>
	)	<u>REPORT AND</u>
Respondent.	)	<u>RECOMMENDATION</u>

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge George J. Limbert. (ECF #14). The Report and Recommendation, issued on April 10, 2018 is hereby ADOPTED by the Court. Petitioner's Motion is therefore DISMISSED with prejudice.

**Procedural History**

On April 14, 2016, Petitioner Carter executed a petition for a writ of federal habeas corpus under 28 U.S.C. § 2254, which was filed in this Court on April 25, 2016, claiming that his convictions and sentences in State of Ohio v. Robert Fitzgerald Carter, Case No. G-4801-CR-0201301019-000 violated his constitutional rights. (ECF #1). Petitioner seeks relief for alleged constitutional violations that occurred in conjunction with his Lucas County, Ohio Court of Common Pleas conviction for aggravated murder with a firearm specification. (ECF #8-1 at 38-39). On July 19, 2016, Respondent Shelby Smith, Warden of the correctional Reception Center in Orient, Ohio ("Respondent"), filed a return of writ. (ECF #8). On April 5, 2017, Petitioner pro

se filed a traverse. (ECF #13). Magistrate Judge George J. Limbert recommended the Court dismiss Carter's petition with prejudice in a Report and Recommendation filed on April 10, 2018. (ECF #14). Petitioner Carter, filed an Objection to the Report and Recommendation on August 3, 2018. (ECF # 18). The Respondent filed a Response to the Objections to the Report and Recommendation on August 10, 2018. (ECF #19).

Magistrate Judge Limbert recommended that Carter's motion be dismissed for the following reasons: Carter failed to state a cognizable claim and has procedurally defaulted any assertion concerning sufficiency of the evidence as claimed in Ground for Relief Number 1; fundamental fairness was not denied through the inadvertent admission of video evidence as claimed in Ground for Relief Number 2; any assertion concerning a mistrial for admission of prior bad acts evidence is a state law claim and thus not cognizable in federal habeas corpus, furthermore, fundamental fairness was not denied as claimed in Ground for Relief Number 3; and finally, Petitioner's claim of ineffective assistance of trial counsel has been procedurally defaulted and Petitioner fails to present any assertion concerning a miscarriage of justice. (ECF #14 at 16-17, 22, 27, 28).

#### **Standard of Review for a Magistrate Judge's Report and Recommendations**

The applicable standard of review of a magistrate judge's report and recommendation depends upon whether objections were made to that report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case *de novo*. FED. R. CIV. P. 72(b) states:

The district judge must determine *de novo* any part of the magistrate judge's dispositions that has been properly objected to. The district judge may accept, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

### Discussion

The Court conducted a *de novo* review of this case and has considered all of the pleadings and filings of the parties. *See Ohio Citizen Action v. City of Seven Hills*, 35 F. Supp. 2d 575, 577 (N.D. Ohio 1999). The Court finds Magistrate Judge Limbert's Report and Recommendation to be thorough, well-written, well-supported, and correct. The court finds that Petitioner's objections raise no arguments (factual or legal) that have not been fully addressed by the Magistrate's Report and Recommendation. After careful evaluation of the record, the Court ADOPTS the Report and Recommendation in its entirety. The petition is, therefore, denied, and the case is dismissed. Further, for the reasons stated in the Magistrate Judge's Report and Recommendation, a reasonable jurist could not conclude that dismissal of the petition is in error or that Petitioner should be permitted to proceed further. Accordingly, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); FED. R. APP. P. 22(b).

IT IS SO ORDERED.

  
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DONALD C. NUGENT  
United States District Judge

DATED: August 28, 2018